

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. MINKOW
Deputy

LC 2001-000234

FILED: _____

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

ISIDRIO HERNANDEZ

DIANA L BRAATEN

MESA CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Sec. 16, and A.R.S. Sec. 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Mesa City Court and the memoranda submitted by counsel.

Appellant, Isidrio Hernandez, was arrested December 31, 2000 and charged with several civil traffic violations, driving while under the influence of intoxicating liquor in violation of A.R.S. Sec. 28-1381(A)(1) and (A)(2), both Class 1 misdemeanors, and extreme driving while under the influence of intoxicating liquor, a Class 1 misdemeanor in violation of A.R.S. Sec. 28-1382(A). After his arrest, Appellant agreed to take a blood test. He was transported to the Mesa Police Department DUI van where his blood was drawn by a phlebotomist, Thomas Booth. Appellant filed a Motion to Suppress the blood test results. That motion was consolidated with a hearing on several other

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cases involving identical issues. Appellant's Motion to Suppress was denied.

In an obviously well thought-out and constructed argument, the Appellant claims that a phlebotomist who is not supervised by a physician [as medical assistants are required under A.R.S. Sec. 32-1456 (A)] is not a "qualified person within the meaning of A.R.S. Sec. 28-1388(A)." Therefore, Appellant asserts that the trial judge erred in denying his Motion to Suppress the results of the blood draw.

First, this Court notes that A.R.S. Sec. 32-1456(A) is a regulatory statute governing medical assistants. That statute has no applicability to a forensic blood draw in a criminal case. The trial judge made this specific finding in his ruling of March 21, 2001.

Evidence was presented to the trial judge that a qualified individual performed the blood draw in this case. It is important to note that there is no question but that the blood draw was performed properly by someone who knew what they were doing, who had experience, and that no physical harm was caused to the Appellant during the blood draw. The only question is whether the phlebotomist was supervised by a physician. The trial judge found that the phlebotomist was a qualified individual within the meaning of applicable law. A.R.S. Sec. 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).

Most importantly, A.R.S. Sec. 28-1388(A) provides in the second sentence of that section:

The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

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Appellant seems to have ignored the second sentence of this statute as quoted above. Clearly, our legislature has provided that the qualifications of the individual or phlebotomist withdrawing the blood are not foundational prerequisites for the admissibility of the alcohol content of the blood. There is no statutory nor constitutional right to have a medical assistant or phlebotomist supervised by a physician perform a blood draw under either Arizona law or Federal law.

Appellant's complaints regarding the phlebotomist are therefore without merit. The trial judge correctly denied the Motion to Suppress for the reasons that the qualifications of the person making the blood draw are not prerequisites to the admissibility of the results of the blood draw.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Mesa City Court. IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all future proceedings.